

**From:** Minh Duong  
**To:** Microsoft ATR  
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**Subject:** Settlement not adequate

With two federal judges having found that Microsoft is guilty of monopolistic practices, the settlement agreement is wholly inadequate to redress nor prevent the infractions for which Microsoft was found guilty. While a breakup may not be in the best interest of the company nor the industry, this settlement has less merit than the 1995 consent decree that Microsoft violated.

Any settlement made must do more than rely on the vigilance of the Justice Department to assure that Microsoft follows the settlement. The settlement also must not be so vague as to allow Microsoft loopholes. As it stands, the settlement allows Microsoft to define its own behaviors as conforming or non-conforming through the wrangling of what it deems "would compromise the security of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems [etc]. . ." With UTICA/EULA, Microsoft can find other exceptions. Even if it violated the behaviors it sets, Microsoft polices itself through its influence in naming the oversight committee that oversees it.

Finally, in the unlikely event that Microsoft is found guilty by the oversight committee of violations, there are no provisions for punishment or procedures for redress. Does the DOJ sue again?

The settlement is not a sellout. It is a rubber stamp to all the policies that has made Microsoft a monopoly. The Bush claims to be business-friendly; this settlement adjusts that view to be "biggest-business-friendly."

As a test of settlement to address users' concerns bear in mind the following scenario: At the moment, the latest version of Windows (XP) is now selling. While it is an advance on previous versions, certain features (most of which are unnecessary) make it more difficult for users to divorce them from Microsoft. Product Activation is Microsoft's solution to software piracy. Users have to contact Microsoft after installing XP to allow XP to work more than 30 days

after install. After 120 days, XP checks to make sure that it is still running on the same computer on which it was installed. Imagine 3 years from now, Microsoft changes XP through updates and patches so that every 120 days instead of just checking itself, it shuts down until the user deposits \$100 dollars into Microsoft's bank accounts. While it would mean outrage from users, what could they do about it? Absolutely nothing. They have no choice but to pay or not use XP.

Even though home users paid for the software initially, the license agreement on XP allows Microsoft to change the terms and conditions of the use of XP at Microsoft's discretion. Business users typically pay per seat license per year anyway, but Microsoft could still charge them four times a year. This is a clear case of monopoly abuse under the Sherman Antitrust act. What would DOJ do then? Should private individuals sue? Under the settlement this is allowed, but how long would it take to address this issue? In this case the settlement would be useless.

In evaluating the Microsoft case, we often compare precedent and history. In other monopoly cases where violations of the Sherman act were found, no other company was given as much latitude as Microsoft. Was AT&T allowed to determine its own course of action? What about Standard Oil? At the time of those cases both companies decried irrevocable harm to the country and economy if severe penalties were assessed. Years later, I am paying for gas based on the amount of world-wide supply available, and telephone companies are fighting for my long-distance service. Are we better off today? My opinion is yes. This settlement only benefits Microsoft in the long run.

Sincerely,

Minh  
Minh Duong

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